IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 202 of 1987

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OMVATI VINAYSINH CHAUHAN & 1 - Applicant(s)

Versus

JADEJA PRABALSINHJI HARBHANJI & 1 - Opponent(s)

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Appearance :

MR JJ YAJNIK for Petitioner No(s).: 1,2.

MR CD PARMAR for Respondent No(s).: 1.

Respondent No.2 UNSERVED.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 11/07/2005

ORAL JUDGMENT

As the respondent no.2 has not been served, the respondent no.2 is ordered to be deleted from the cause-title of the Revision Application.

Feeling aggrieved by the judgment and order dated 31st January, 1987 passed by the learned Assistant Judge, Rajkot in Civil Appeal No.13/1986, the appellants have preferred the present Revision Application under Section 29(2) of the the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The respondent no.1-plaintiff is the owner of the suit premises, part of a residential house “Rava Vilas” situated at Rajkot. The suit premises was leased to the respondent no.2 for a monthly rent of Rs.50=00. The plaintiff instituted Civil Suit No.87/1985 in the Court of Small Causes, Rajkot for recovery of possession of the suit premises and of amount of arrears of rent on the grounds that the defendant (respondent no.2 herein) was in arrears of rent since 1st May, 1983; that the defendant failed to pay the rent due on receipt of the notice of demand issued under Section 12(2) of the Rent Act. That the defendant was a drunkard and that two complaints for the offences punishable under the Bombay Prohibition Act were lodged against him. The defendant had thus caused

nuisance and annoyance to the plaintiff. The defendant did not reply to the suit notice nor did he file written statement nor did he appear before the Court below to contest the suit. In absence of any controversy the learned trial Judge, by judgment and order dated 15th January, 1986, passed decree for possession and for recovery of the amount of rent due and the mesne profits.

Feeling aggrieved, the present petitioners preferred Civil Appeal No.13/1986 in the Court of learned District Judge, Rajkot. Before the lower appellate Court the petitioners claimed that they and the defendant no.2 were the partners in the firm Dharampal Tyre Remoulding Company. They had, therefore, interest in the suit premises and had right to appeal against eviction decree passed by the learned trial Judge. The lower appellate Court, by impugned judgment and order dated 31st January, 1987, held that the plaintiff had failed to prove his case and that the learned trial Judge had passed decree for eviction erroneously. Further the appellants had no locus standi to prefer appeal nor had they applied for leave to appeal. The lower appellate Court, therefore, dismissed the Appeal. Therefore, the present Revision

Application.

It should be noted here that the suit notice given by the plaintiff was not replied to by the defendant nor did the defendant contest the suit. In the circumstances, the learned trial Judge was absolutely correct in relying upon the pleading and the evidence of the plaintiff and in recording finding in favour of the plaintiff. The petitioners undoubtedly had no locus standi to prefer appeal against the decree for eviction passed against the defendant (the respondent no.2). In my view, the lower appellate Court has erred in holding that the plaintiff had failed to prove his case but has rightly held that the appellants, the present petitioners had no locus standi to prefer the Appeal.

In my view, the Appeal has rightly been dismissed by the lower appellate Court. No interference is warranted. The Revision Application is dismissed. Rule is discharged. Interim relief stands vacated. The Registry shall issue the writ forthwith.

(Ms. R.M.Doshit, J.)

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